

## Message Text

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ACTION AF-10

INFO OCT-01 ISO-00 DHA-02 MCT-01 CIAE-00 DODE-00 PM-05

H-01 INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01

SP-02 SS-15 USIA-06 IO-13 /073 W

-----112875 191235Z /15

R 190930Z JUL 77

FM AMCONSUL DURBAN

TO SECSTATE WASHDC 2615

INFO AMEMBASSY PRETORIA

AMCONSUL JOHANNESBURG

AMCONSUL CAPE TOWN

AMEMBASSY MBABANE

AMEMBASSY MAPUTO

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EO 11652: NA

TAGS: PINS PINT PORS SHUM SF

SUBJ: PIETERMARITZBURG ANC TRIAL CONCLUDES

REF: A) DURBAN A-25, B) DURBAN'S 76 A-66

1. SUMMARY - IN A 532 PAGE JUDGEMENT CONCLUDING A 14-MONTH TRIAL, NINE BLACK DEFENDANTS WERE CONVICTED OF CHARGES UNDER THE TERRORISM ACT. ONE DEFENDANT WAS FOUND INNOCENT. ALL THOSE CONVICTED WERE FOUND GUILTY OF INVOLVEMENT IN A SCHEME TO RECRUIT YOUTHS IN SA FOR TRAINING IN FOREIGN COUNTRIES TO ENGAGE IN GUERRILLA WARFARE UNDER THE ANC. SENTENCING WILL LIKELY TAKE PLACE BEFORE THE END OF JULY. DEFENSE ATTORNEYS OPINED TO US THAT THE TRIAL WAS PROCEDURALLY CORRECT AND THE JUDGE EVIDENCED NO BIAS AGAINST THE ACCUSED NOR INFRINGED THEIR RIGHTS UNDER SA LAW. THEY PLAN TO APPEAL BUT ARE NOT OPTIMISTIC OF HAVING THE VERDICT REVERSED. END SUMMARY.

2. AFTER A MARATHON TRIAL IN PIETERMARITZBURG DRAGGING

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THROUGH 101 DAYS OF HEARINGS OVER A 14-MONTH PERIOD, JUSTICE J.A. HOWARD DELIVERED IN ENGLISH AND ZULU, A 532-PAGE VERDICT, WHICH TOOK TWO DAYS TO READ. THE 10 ACCUSED HAD BEEN CHARGED UNDER THE TERRORISM ACT OF INVOLVEMENT IN RECRUITMENT IN SOUTH AFRICA OF BLACK YOUTHS TO BE SENT TO OTHER COUNTRIES TO UNDERGO MILITARY TRAINING UNDER THE AEGIS OF THE ANC, WITH THE GOAL OF RETURNING TO SA TO JOIN IN A GUERRILLA WAR. TWO

OF THE TEN (CLEOPAS NDHLOVU AND JOSEPH NDULI) WERE CONVICTED ON TWO COUNTS WHILE SEVEN (THEMBA GWELA, VUSIMUSI MAGUBANE, MATTHEWS MEYIWA, AZARIA NDEBELE, ZAKHELE MADLALOSE, JOHN NENE AND ANTON XABA) WERE FOUND GUILTY OF ONE COUNT AND ONE (WILLIAM KHANYILE) WAS INNOCENT AND ORDERED RELEASED.

3. REFAIRS PROVIDE DETAILS RE SUMMATION OF CHARGES, DEFENSE TACTICS AND ANALYSIS OF COURSE OF TRIAL. THE "PIETERMARITZBURG TEN" WERE ACCUSED OF RECRUITING YOUTHS FOR TERRORIST TRAINING ABROAD, SETTING UP WEAPONS CACHES IN SA FOR USE IN A FUTURE REVOLUTION AND FORMING ANC REVOLUTIONARY CELLS. THE DEFENSE SOUGHT TO MAINTAIN THAT THE ACCUSED WERE LABOR ORGANIZERS SENDING YOUTHS OUT OF SA FOR TRAINING BY LABOR ORGANIZATIONS AND THAT, WHILE SOME OF THE ACCUSED HAD AT ONE TIME BEEN ANC MEMBERS, NONE WERE MEMBERS AT THE TIME OF THEIR ARREST. DEFENSE LAWYERS HAD TOLD US EARLY IN THE TRIAL THEY HAD NO DOCUMENTARY PROOF TO SUPPORT THIS LINE OF DEFENSE AND WOULD REST REAL HOPES FOR ACQUITTAL ON DEMONSTRATING THAT THE POLICE HAD INTIMIDATED AND TORTURED MANY OF THE WITNESSES IN THE TRIAL. THE DEFENSE WAS, IN FACT, ABLE TO PRODUCE TWO BLACK STATE WITNESSES WHO RETURNED TO TESTIFY THAT THEY HAD PERJURED THEMSELVES IN PREVIOUS TESTIMONY DUE TO INTIMIDATION AND PHYSICAL ABUSE BY THE SECURITY POLICE. HOWEVER, JUSTICE HOWARD IN HIS JUDGEMENT STATED THAT ON THE WHOLE HE COULD NOT FIND EVIDENCE TO PROVE THAT THE POLICE FOLLOWED THE "PATTERN OR SYSTEM" OF INVESTIGATION OR INTERROGATION CLAIMED BY THE LIMITED OFFICIAL USE

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DEFENSE AND THAT THE TESTIMONY OF MOST OF THE WITNESSES FOR THE STATE WAS BELIEVABLE AND APPARENTLY GIVEN WITHOUT THREATS OR COERCION BY THE SECURITY POLICE.

4. OF ADDITIONAL INTEREST, JUSTICE HOWARD RAISED THE QUESTION OF CULPABILITY IN THE DEATH IN DETENTION OF JOSEPH MDLULI. MDLULI HAD BEEN UNDER CHARGES IN EARLY 1976 ALONG WITH THE OTHER ACCUSED BUT DIED IN DETENTION UNDER MYSTERIOUS CIRCUMSTANCES (DURBAN 089). FOUR MEMBERS OF THE SECURITY POLICE HAD BEEN INDICTED FOR HIS MURDER BUT WERE ACQUITTED WHEN THE JUDGE, AND SUBSEQUENTLY THE NATAL ATTORNEY GENERAL, COLD FIND NO "PRIMA FACIE" CASE AGAINST THEM. JUSTICE HOWARD SAID HE WAS SATISFIED MDLULI'S INJURIES WERE NOT SELF-INFLICTED OR ACCIDENTAL AND "THE MOST PROBABLE EXPLANATION IS THAT ALL OR MOST OF THEM WERE INFLICTED BY THE SECURITY POLICE". HOWEVER, HE SAID THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A POSITIVE FINDING IN THE MATTER.

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SP-02 SS-15 USIA-06 IO-13 /073 W  
-----113474 191234Z /44

R 190930Z JUL 77  
FM AMCONSUL DUBAN  
TO SECSTATE WASHDC 2616  
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5. ONE OF TWT DEFENSE ADVOCATES, CHRIS NICHOLSON, TOLD A CONGEN OFFICER AFTER THE TRIAL THAT HE BELIEVED JUSTICE HOWARD CONDUCTED A JUDICIALLY FAIR TRIAL. HE SAID NONE OF THE LINES OF ARGUMENT THAT THE DEFENSE WISHED TO RAISE HAD BEEN BLOCKED BY THE JUSTICE, THAT PROPER PROCEDURES WERE ADHERED TO AND THAT, BEFORE THE COURT AT LEAST, THE RIGHTS OF THE ACCUSED WERE PROTECTED. NICHOLSON WAS DISAPPOINTED THAT THE JUSTICE DID NOT ACCEPT THE DEFENSE'S LINE OF ARGUMENT ON THE QUESTION OF THE THREE D'S (DREAD, DEBILITY AND DEPENDENCE) INTRODUCED BY AN EXPERT US WITNESS, DR. LOUIS WEST. THE DEFENSE HAD ARGUED, AND DR. WEST HAD SUPPORTED, THE CONTENTION THAT THE TREATMENT OF THE STATE WITNESSES IN DETENTION PRODUCED A PSYCHOLOGICAL STATE AKIN TO THAT OF A PRISONER OF WAR AND THAT TESTIMONY GIVEN BY WITNESSES INCARCERATED IN SOLITARY CONFINEMENT FOR LONG PERIODS CANNOT BE RELIED UPON. NICHOLSON HAD HOPED THAT THIS ARGUMENT, COUPLED WITH THE TESTIMONY OF THE TWO WITNESSES WHO STATED THEY HAD BEEN COERCED, THE CIRCUMSTANCES OF MDLULI'S DEATH AND THE JUDICIAL PRECEDENT OF THE ACQUITTAL OBTAINED IN CAPE TOWN IN LIMITED OFFICIAL USE

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APRIL IN A CASE WHERE A STATE WITNESS HAD BEEN UNDER PHYSICAL DURESS TO TESTIFY, WOULD SUFFICE TO CAST SUFFICIENT DOUBT ON THE CREDIBILITY OF THE STATE'S WITNESSES SO THAT THE JUDGE COULD NOT CONVICT. NICHOLSON TOLD US HE INTENDED TO USE

THE CAPE TOWN CASE AS THE BASIS OF HIS APPEAL. HE ADDED THAT HE WAS NOT OPTIMISTIC IN OVERTURNING THE VERDICT, SINCE THE WEIGHT OF EVIDENCE IS SO STRONGLY AGAINST THE ACCUSED AND PARTICULARLY BECAUSE OF THE FACT THAT FIVE OF THE NINE DEFENDENTS HAVE PRIOR CONVICTIONS FOR SIMILAR OFFENSES IN THE 1960S.

6. ARGUMENTS OVER SENTENCING WILL BEGIN JULY 21 AND SHOULD END BY JULY 28. NICHOLSON EXPECTS 5-15 YEAR SENTENCES FOR MOST OF THE ACCUSED, WITH THOSE HAVING PRIOR CONVICTIONS RECEIVING THE LONGER TERMS.  
FARBER

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